STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended:	**06/01/07**	Bill No:	**AB 831**
Tax:	**Sales and Use Special Property**	Author:	**Parra**
Related Bills:			

BILL SUMMARY

This bill would require that any legislative measure creating a new tax expenditure, or extending the operation of an existing tax expenditure, as defined, would include a repeal of the expenditure in a manner that reflects the needs and conditions of the proposed expenditure.

Summary of Amendments

Since the previous analysis, this bill was amended to delete provisions that would have required the Department of Finance (DOF) to review, over a 10-year period, all tax expenditures for their effectiveness, and would have required a repeal date on specified tax expenditures.

ANALYSIS

CURRENT LAW

Since 1971, pursuant to Section 13305 of the Government Code, the DOF has been required to provide a tax expenditure report to the Legislature. Chapter 1762, Statutes of 1971, required that a biennial report be submitted to the Legislature, and that the report include the following: a comprehensive list of tax expenditures, additional detail on individual categories of tax expenditures, and historical information on the enactment and repeal of tax expenditures. Chapter 268, Statutes of 1984, increased the reporting frequency from once every two years to once a year.

Effective January 1, 2007, Assembly Bill 1809 (Chapter 49, Statutes of 2006, Committee on Budget) modified the DOF annual report to require them to provide a report to the Legislature by September 15th of each year on each tax expenditure exceeding \$5 million annually. A tax expenditure is defined as a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by state law. The required report is to include each of the following:

- The statutory authority for tax expenditures.
- A description of the legislative intent for a tax expenditure, where the act adding or amending the expenditure contains legislative findings and declarations of the intent, or such intent is otherwise expressed or specified by the act.
- The sunset date of tax expenditures, if applicable.
- A brief description of the beneficiaries of the tax expenditure.
- An estimate or range of estimates for the state and local revenue loss for the current fiscal year and the two subsequent fiscal years. For sales and use tax expenditures, this would include partial year exemptions and all other tax expenditures when the Board has obtained such information.

- For sales and use tax and personal and corporation tax expenditures, the number of returns filed or taxpayers affected, as applicable, for the most recent tax year for which full year data is available.
- A listing of any comparable federal tax benefit, if any.
- A description of any tax expenditure evaluation or compilation of information completed by any state agency since the last report made under this section.

PROPOSED LAW

This bill would add Section 13305.5 to the Government Code to require that on and after January 1, 2008, any legislative measure creating a new tax expenditure, or extending the operation of an existing tax expenditure, would include a repeal of the expenditure in a manner that reflects the needs and conditions of the proposed expenditure.

This bill would define a "tax expenditure" as a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by state law.

BACKGROUND

There have been several bills introduced during the last few years related to tax expenditure reports. These include:

AB 1933 (Coto, 2006) would have required: 1) the DOF to review, over a 10-year period, all tax expenditures in excess of $1 million that were in existence since January 1, 2007, as specified; and 2) any legislative measure creating a new tax expenditure, or extending the operation of an existing tax expenditure, to meet certain requirements, as specified. This bill failed passage in Senate Revenue and Taxation Committee.

AB 168 (Ridley-Thomas, 2005) would have required: (1) the Board and the Franchise Tax Board (FTB) to each provide to the Legislature, the DOF and the Legislative Analyst Office (LAO), a report, based on a static revenue analysis, of the estimated revenue losses attributable to each tax expenditure, to the extent feasible, that produced a revenue loss in excess of $25 million in the prior fiscal year; (2) the DOF to provide, biennially, to the Legislature and the LAO, a report, based on a dynamic revenue analysis, of the estimated revenue losses attributable to tax expenditures that produced revenue losses in excess of $25 million, as specified; (3) the LAO to review the reports and make recommendations to the Legislature as to which tax expenditures should be modified or repealed.

AB 168 was vetoed by Governor Schwarzenegger and the veto message states:

> "The Department of Finance and the Legislative Analysts Office currently have broad authority to review and report tax expenditures to the Legislature. This bills restatement of the existing tax reporting requirements is redundant and unnecessary."

AB 735 (Arambula, 2005) would have: (1) required the LAO to establish a process to review all tax exceptions, and submit a report to the Legislature by December 31, 2006; (2) required the LAO to review and analyze any relevant reports prepared by the DOF, and request assistance from the Board and the FTB in order to make the report as comprehensive as possible; and (3) directed the Assembly and Senate Revenue and Taxation Committees to review the report submitted by the LAO and authorize them to select a group of tax exceptions for deletion or modification, reporting their recommendations to the fiscal committees for consideration during the budget process. This bill was never heard by a committee.

SB 577 (Figueroa, 2005) would have, among other things, required the DOF, in consultation with the Board and the FTB, to report to the Legislature by January 1, 2008, on the effectiveness of "tax expenditures," as defined. This provision was amended out of the bill.

AB 2106 (Ridley-Thomas, 2004) would have, among other things, required the DOF, in conjunction with the Governor's Budget, to submit to the Legislature a report of tax expenditures currently in effect. The bill would have specified that, among other things, based on information provided by the Board to the extent feasible, the report include the number of tax returns or taxpayers affected by any sales or use tax expenditure, the distribution of that expenditure, and the size and type of business or industry to which that expenditure is made available.

AB 2106 was vetoed by Governor Schwarzenegger and the veto message states:

> "Under existing law, the Department of Finance already is required to provide an annual tax expenditure report to the Legislature containing specific information. This bill changes the type of information that is provided in the annual report. However, some of the information that Department of Finance would be required to report is not available. For example, the original intent of a given tax expenditure is often not clearly defined in the enabling statute. In addition, the number and income distribution of taxpayers benefiting from sales tax exemptions would not be known because this information is not required to be reported by retailers when filing their tax returns. Furthermore, some of the information might not be available for reporting to the Legislature because of existing confidentiality requirements."

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the American Federation of State, County, and Municipal Employees. According to the author's office, "This measure will guarantee the Legislature's appropriate role in re-authorizing or re-directing tax expenditures to ensure we indeed are receiving a maximum return on the investments with our state's limited dollars."

2. **The June 1, 2007** amendments make a clarifying, technical change. **The April 25, 2007** amendments deleted provisions that required the DOF to review, over a 10-year period, and provide a report of the review to the Legislature, all tax expenditures in excess of $5 million that were in existence on or after January 1, 2008. The amendments also inserted a provision that required a repeal date on specified tax expenditures. **The April 17, 2007** amendments: 1) for sales and use tax expenditures, specified that an estimate of the revenue loss include partial year exemptions and all other tax expenditures when the Board has obtained that information; 2) required that the review include additional information on each tax expenditure, including, but not limited to, the statutory authority and description of the legislative intent, and other information on sales and use tax expenditures (number of returns filed or business entities affected); and 3) made technical corrections. **The March 26, 2007 amendments**: 1) required the DOF, rather than the Legislature, to review all tax expenditures that exceed $5 million per calendar year and that are in existence since January 1, 2008; 2) required the DOF to review 10 percent of the tax expenditures by July 1, 2008, and 10 percent by July 1 of each

of the succeeding nine years, so that all of the tax expenditures are reviewed by July 1, 2018; and 3) required any legislative measure creating a new tax expenditure, or extending the operation of an existing tax expenditure, to meet certain requirements, as specified.

3. **In general, both Board staff and taxpayers must perform many of the same tasks to implement a tax expenditure, as well as end it.** With respect to the Board's operations, those tasks would include: preparing special notices, notifying affected taxpayers, posting information on the Board's website, developing or revising a regulation or a publication, preparing guidelines or instructions for taxpayers and Board staff, answering telephone inquiries, modifying tax returns and other Board forms, and programming. With respect to taxpayers' operations, such tasks would include reprogramming their cash registers and/or computer systems and training staff.

   Currently, the Board uses various methods to notify taxpayers of changes in the tax law, which include: issuing a special notice, including a special insert with the tax return, including an article in the quarterly Tax Information Bulletin, and posting information on the Board's website. If the Board were to administer more expenditures with sunset provisions, as those expenditures are set to expire, staff may need to find more ways to notify taxpayers of the change to ensure that they properly report their tax liability.

4. **The Board's Publication 61, *Sales and Use Taxes: Exemptions and Exclusions*, provides a detailed listing of various exemptions and exclusions from the sales and use tax.** The publication has two listings: one by category and another by alphabetical reference. The listings provide a brief general description of the exemption or exclusion, including the statutory authority. The listing by category also provides an estimate of the revenue loss of the exemption or exclusion, if available. It should be noted that it is not always possible to quantify the revenue loss of a particular exemption or exclusion because reliable data is not available. This publication may be accessed under the Board's website at www.boe.ca.gov/sutax/staxpubsn.htm.

COST ESTIMATE

This bill would not impact the Board's administrative costs.

REVENUE ESTIMATE

This bill would not in itself directly impact revenues. However, future legislation creating a new tax expenditure or extending the operation of an existing tax expenditure would include a sunset date that is reflective of the needs and conditions of the proposed expenditure.

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